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Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

2ND SESSION, 41ST LEGISLATURE, ONTARIO
66 ELIZABETH II, 2017

Bill 137

**An Act to prohibit unsolicited phone calls for the purpose of selling,
leasing, renting or advertising prescribed products or services**

Mr. Y. Baker

Private Member's Bill

1st Reading May 29, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Stop the Calls Act, 2017*.

The Act establishes a prohibition for unsolicited phone calls for the purpose of selling, leasing, renting or advertising prescribed products or services, subject to certain qualifications.

Contravention of this prohibition is an offence. In addition, any contract entered into as a result of such a contravention is void. If a contract is deemed to be void, the consumer is entitled to repayment for the product or service and, if applicable, to the payment of any reasonable costs incurred in uninstalling and returning the product and, if appropriate, in obtaining and installing a replacement.

If the refund is not paid, the consumer may commence an action in the Superior Court of Justice. The consumer is entitled, if successful, to twice the money paid under the contract, in addition to the reasonable costs referred to above. A consumer who obtains an award of legal costs is entitled to recover any additional actual legal costs incurred in obtaining the order.

Consumers are protected from liability if a contract is deemed void, and no cause of action against them arises as a result of the contract being deemed void.

The Minister of Government and Consumer Services is given the power to make regulations dealing with a broad range of matters under the Act, including prescribing the products or services to which the prohibition in the Act applies.



**An Act to prohibit unsolicited phone calls for the purpose of selling, leasing,
renting or advertising prescribed products or services**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION AND ADMINISTRATION

Definitions

1 In this Act,

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes; (“consommateur”)

“Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act. (“règlements”)

Administration

2 The Minister is responsible for the administration of this Act.

UNSOLICITED TELEMARKETING

Unsolicited telemarketing

3 (1) No person shall,

- (a) make an unsolicited phone call to a consumer for the purpose of,
 - (i) selling, leasing, renting or offering to sell, lease or rent a prescribed product,
 - (ii) selling or offering to sell a prescribed service, or
 - (iii) advertising a prescribed product or service; or
- (b) cause a person to make a phone call described in clause (a).

Meaning of “unsolicited”

(2) For the purposes of subsection (1), a phone call is unsolicited if a person in the consumer’s household did not provide their consent to be contacted regarding the product or service in advance of the phone call.

Form of consent

(3) The following rules apply to the consent referred to in subsection (2):

1. The consent may be made orally, in writing or by other affirmative action.
2. The consent is not valid if it was obtained through an unsolicited phone call.
3. The person making the phone call shall bear the onus of proving the consumer's consent.

Exception

(4) Subsection (1) does not apply in respect of a phone call that is,

- (a) made by or on behalf of a registered charity within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada);
- (b) made by or on behalf of a not-for-profit corporation;
- (c) made by or on behalf of a federal political party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party;
- (d) made by or on behalf of a provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act*;
- (e) made by or on behalf of a candidate nominated under the *Municipal Elections Act, 1996*;
- (f) made to a person with whom the person making the phone call, or the person or organization on whose behalf the phone call is made, has an existing business relationship.

Existing business relationship

(5) For the purposes of clause (4) (f), an existing business relationship exists if,

- (a) the person to whom the phone call is made purchased services or purchased, leased or rented products from the person or organization on whose behalf the phone call is made within the eighteen-month period immediately preceding the date of the phone call;
- (b) the person to whom the phone call is made submitted an inquiry or application to the person or organization in respect of whom the phone call is made regarding one of their products or services within the six-month period immediately preceding the date of the phone call; or
- (c) there is a written contract between the person to whom the phone call is made and the person or organization on whose behalf the phone call is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the phone call.

Offence and penalty

(6) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction,

- (a) in the case of a first offence under this Act,
 - (i) to a fine of not more than \$500, in the case of an individual, or
 - (ii) to a fine of not more than \$5,000, in the case of a corporation;
- (b) in the case of a second offence under this Act,
 - (i) to a fine of not more than \$1,000, in the case of an individual, or
 - (ii) to a fine of not more than \$10,000, in the case of a corporation; and
- (c) in the case of a third or subsequent offence under this Act,
 - (i) to a fine of not more than \$2,000, in the case of an individual, or
 - (ii) to a fine of not more than \$25,000, in the case of a corporation.

Contract void

4 (1) A contract that is entered into as the result of a contravention of subsection 3 (1) is deemed to be void.

Same

(2) For greater certainty, a contract may be deemed to be void under subsection (1) even if,

- (a) the consumer has already paid for the product or service; or
- (b) the product or service has already been delivered or provided to the consumer.

Right to payment

5 (1) If a contract between a person and a consumer to provide a product or service to the consumer is deemed to be void under subsection 4 (1), the person who provided the product or service shall, in accordance with the regulations, pay to the consumer,

- (a) the money paid by the consumer under the contract; and
- (b) if applicable, any additional reasonable costs the consumer incurred in uninstalling and returning the product and, if appropriate, in obtaining and installing a replacement.

Right of action if no payment

(2) If the consumer has not received payment as required by subsection (1), he or she may commence an action in the Superior Court of Justice to recover the amounts referred to in subsection (3).

Judgment

(3) If the consumer is successful in the action, unless in the circumstances it would be inequitable to do so, the court shall order that the consumer recover,

- (a) twice the amount of the money referred to in clause (1) (a); and
- (b) the costs, if any, referred to in clause (1) (b).

Legal costs

(4) If the consumer obtains an award of legal costs in an order made under subsection (3), the consumer is entitled to recover any additional actual legal costs incurred in obtaining the order.

Protection from liability

6 (1) If a contract is deemed to be void under subsection 4 (1), the consumer shall not be liable for any obligations under the contract or a related agreement, including obligations purporting to be incurred as cancellation charges, administration charges or any other charges or penalties.

Same

(2) No cause of action against the consumer arises as a result of a contract being deemed to be void under subsection 4 (1) or as a result of the operation of subsection (1).

REGULATIONS

Regulations

7 The Minister may make regulations,

- (a) prescribing a product or service for the purposes of clause 3 (1) (a);
- (b) exempting any person or class of persons from any provision of this Act, subject to such conditions or restrictions as may be prescribed;
- (c) governing payments to consumers under subsection 5 (1).

COMMENCEMENT AND SHORT TITLE

Commencement

8 This Act comes into force two months after the day it receives Royal Assent.

Short title

9 The short title of this Act is the *Stop the Calls Act, 2017*.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a very important document, as it sets out the President's policy for the new year. The President states that he is pleased to see the Congress assembled, and that he is confident that the country is in a good position to meet the challenges of the future. He also mentions the recent election of Abraham Lincoln as President, and expresses his confidence in Lincoln's ability to lead the country.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 1, 1861. It provides a detailed account of the financial state of the country, and includes information on the national debt, the budget, and the state of the economy. The Secretary states that the country is in a sound financial position, and that the government is committed to maintaining the integrity of the national debt.

3. The third part of the document is a report from the Secretary of the Interior, dated January 1, 1861. It provides a detailed account of the state of the interior, and includes information on the land, the minerals, and the population. The Secretary states that the interior is a rich and fertile land, and that the government is committed to developing it for the benefit of the people.

4. The fourth part of the document is a report from the Secretary of the Navy, dated January 1, 1861. It provides a detailed account of the state of the navy, and includes information on the ships, the personnel, and the operations. The Secretary states that the navy is a powerful and efficient force, and that the government is committed to maintaining its strength.

5. The fifth part of the document is a report from the Secretary of the War, dated January 1, 1861. It provides a detailed account of the state of the war, and includes information on the troops, the equipment, and the operations. The Secretary states that the war is a difficult and dangerous one, but that the government is committed to winning it.

6. The sixth part of the document is a report from the Secretary of the State, dated January 1, 1861. It provides a detailed account of the state of the world, and includes information on the relations with other countries, the peace, and the justice. The Secretary states that the world is a peaceful and just one, and that the government is committed to maintaining its peace and justice.

7. The seventh part of the document is a report from the Secretary of the Education, dated January 1, 1861. It provides a detailed account of the state of the education, and includes information on the schools, the teachers, and the students. The Secretary states that the education is a vital part of the country, and that the government is committed to improving it.

8. The eighth part of the document is a report from the Secretary of the Agriculture, dated January 1, 1861. It provides a detailed account of the state of the agriculture, and includes information on the crops, the livestock, and the farmers. The Secretary states that the agriculture is a vital part of the country, and that the government is committed to supporting it.

9. The ninth part of the document is a report from the Secretary of the Commerce, dated January 1, 1861. It provides a detailed account of the state of the commerce, and includes information on the trade, the shipping, and the industry. The Secretary states that the commerce is a vital part of the country, and that the government is committed to supporting it.

10. The tenth part of the document is a report from the Secretary of the Finance, dated January 1, 1861. It provides a detailed account of the state of the finance, and includes information on the money, the banks, and the interest. The Secretary states that the finance is a vital part of the country, and that the government is committed to supporting it.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1801. It is a very important document, as it is the first time that the President has addressed the Congress since the establishment of the office. The letter is written in a very formal and dignified style, and it contains many important points. The President begins by expressing his gratitude to the Congress for the honor of electing him to the office. He then goes on to discuss the state of the Union, and the progress of the government. He mentions the many difficulties that the government has faced, and the many successes that it has achieved. He also discusses the future of the government, and the steps that he has taken to ensure its stability and prosperity. The letter is a very important document, as it sets the tone for the rest of the administration. It is a document that is full of wisdom and insight, and it is a document that is worth reading for anyone who is interested in the history of the United States.

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Droit à un paiement

5 (1) Si le contrat qu'elle a conclu avec un consommateur pour lui fournir un produit ou un service est réputé nul en application du paragraphe 4 (1), la personne qui a fourni le produit ou le service paie au consommateur, conformément aux règlements :

- a) les sommes d'argent que le consommateur a versées aux termes du contrat;
- b) s'il y a lieu, les frais additionnels raisonnables que le consommateur a engagés pour enlever et retourner le produit et, le cas échéant, pour obtenir et installer un produit de remplacement.

Droit d'introduire une action en cas de non-paiement

(2) S'il n'a pas reçu le paiement exigé au paragraphe (1), le consommateur peut introduire une action devant la Cour supérieure de justice en vue de recouvrer les sommes d'argent prévues au paragraphe (3).

Jugement

(3) À moins que cela ne soit inéquitable dans les circonstances, le tribunal ordonne que le consommateur qui obtient gain de cause dans une action recouvre :

- a) deux fois les sommes d'argent visées à l'alinéa (1) a);
- b) les frais visés à l'alinéa (1) b), le cas échéant.

Dépens

(4) Le consommateur qui obtient des dépens dans une ordonnance rendue en application du paragraphe (3) a le droit de recouvrer les dépens réels additionnels qu'il a engagés pour obtenir l'ordonnance en question.

Immunité

6 (1) Si un contrat est réputé nul en application du paragraphe 4 (1), le consommateur n'est responsable, aux termes du contrat ou d'une entente connexe, d'aucune obligation, y compris une obligation qui se présente comme étant contractée au titre de frais, notamment de frais d'annulation ou de frais d'administration, ou au titre de pénalités.

Idem

(2) Ni le fait qu'un contrat est réputé nul en application du paragraphe 4 (1) ni l'effet du paragraphe (1) ne donnent lieu à une cause d'action à l'encontre du consommateur.

RÈGLEMENTS

Règlements

7 Le ministre peut, par règlement :

- a) prescrire un produit ou un service pour l'application de l'alinéa 3 (1) a);
- b) dispenser une personne ou une catégorie de personnes d'une disposition de la présente loi, sous réserve des conditions ou restrictions prescrites;
- c) régir les paiements aux consommateurs en application du paragraphe 5 (1).

ENTRÉE EN VIGUEUR ET TITRE ABRÉGÉ

Entrée en vigueur

8 La présente loi entre en vigueur deux mois après le jour où elle reçoit la sanction royale.

Titre abrégé

9 Le titre abrégé de la présente loi est *Loi de 2017 sur les appels indésirables*.

Forme du consentement

(3) Les règles suivantes s'appliquent au consentement visé au paragraphe (2) :

1. Le consentement peut être donné oralement, par écrit ou par un autre acte positif.
2. Le consentement n'est pas valide s'il a été obtenu dans le cadre d'un appel non sollicité.
3. Il incombe à l'appelant de prouver le consentement du consommateur.

Exception

(4) Le paragraphe (1) ne s'applique pas à l'égard d'un appel qui :

- a) est fait par un organisme de bienfaisance enregistré au sens du paragraphe 248 (1) de la Loi de l'impôt sur le revenu (Canada), ou pour son compte;
- b) est fait par une organisation sans but lucratif, ou pour son compte;
- c) est fait par un parti politique fédéral enregistré en application de la *Loi électorale du Canada* (Canada) ou pour son compte, ou par une association de circonscription fédérale ou un candidat inscrit à une élection fédérale qui est parrainé par ce parti, ou pour son compte;
- d) est fait par un parti politique provincial, une association de circonscription ou un candidat ou un candidat à la direction d'un parti inscrit en application de la *Loi sur le financement des élections*, ou pour son compte;
- e) est fait par un candidat déclaré candidat en application de la *Loi de 1996 sur les élections municipales*, ou pour son compte;
- f) est fait à une personne avec qui l'appelant, ou la personne ou l'organisation pour le compte de laquelle l'appel est fait, entretiennent une relation d'affaires existante.

Relation d'affaires existante

(5) Pour l'application de l'alinéa (4) f), une relation d'affaires existe si, selon le cas :

- a) l'appelé a acheté des services ou acheté, pris à bail ou loué des produits de la personne ou de l'organisation pour le compte de laquelle l'appel est fait dans les 18 mois précédant immédiatement la date de l'appel;
- b) dans les six mois précédant immédiatement la date de l'appel, l'appelé a présenté à la personne ou à l'organisation à l'égard de laquelle l'appel est fait une demande pour un de ses produits ou services ou une demande de renseignements concernant un de ses produits ou services;
- c) l'appelé et la personne ou l'organisation pour le compte de laquelle l'appel est fait ont conclu un contrat écrit qui est toujours en vigueur ou qui a expiré dans les 18 mois précédant immédiatement la date de l'appel.

Infractions et peines

(6) Quiconque contrevient au paragraphe (1) est coupable d'une infraction et passible, sur déclaration de culpabilité :

- a) pour une première infraction à la présente loi :
 - (i) d'une amende maximale de 500 \$, dans le cas d'un particulier,
 - (ii) d'une amende maximale de 5 000 \$, dans le cas d'une personne morale;
- b) pour une deuxième infraction à la présente loi :
 - (i) d'une amende maximale de 1 000 \$, dans le cas d'un particulier,
 - (ii) d'une amende maximale de 10 000 \$, dans le cas d'une personne morale;
- c) pour une troisième infraction ou une infraction subséquente à la présente loi :
 - (i) d'une amende maximale de 2 000 \$, dans le cas d'un particulier,
 - (ii) d'une amende maximale de 25 000 \$, dans le cas d'une personne morale.

Contrat nul

4 (1) Le contrat conclu par suite d'une contravention au paragraphe 3 (1) est réputé nul.

Idem

- (2) Il est entendu qu'un contrat peut être réputé nul en application du paragraphe (1) même si, selon le cas :
 - a) le consommateur a déjà payé pour le produit ou le service;
 - b) le produit ou le service a déjà été livré ou fourni au consommateur.

Loi interdisant les appels non sollicités visant à vendre, à louer à bail, à louer ou à annoncer des produits ou services prescrits

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Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

«consommateur» Particulier qui agit à des fins personnelles, familiales ou domestiques, mais non commerciales.

«ministère» Le ministère du ministre. («Ministry»)

«ministre» Le ministre des Services gouvernementaux et des Services aux consommateurs ou l'autre membre du Conseil exécutif à qui la responsabilité de l'application de la présente loi est assignée ou transférée en vertu de la *Loi sur le Conseil exécutif*. («Minister»)

«prescrit» Prescrit par les règlements. («prescribed»)

«règlements» Les règlements pris en vertu de la présente loi. («regulations»)

Application

2 Le ministre est chargé de l'application de la présente loi.

TÉLÉMARKETING NON SOLLICITÉ

Télémarketing non sollicité

3 (1) Nul ne doit :

- faire un appel non sollicité à un consommateur pour :
- vendre, donner à bail ou louer ou offrir de vendre, de donner à bail ou de louer un produit prescrit,
- vendre ou offrir de vendre un service prescrit,
- annoncer un produit ou service prescrit;
- faire en sorte qu'une personne fasse l'appel visé à l'alinéa a).

Définition de «non sollicité»

(2) Pour l'application du paragraphe (1), on entend par appel non sollicité un appel fait relativement au produit ou au service si une personne du ménage du consommateur n'a pas préalablement donné son consentement à l'appel.

NOTE EXPLICATIVE

Le projet de loi édicte la *Loi de 2017 sur les appels indésirables*.

La Loi institue une interdiction d'appels non sollicités visant à vendre, à donner à bail, à louer ou à annoncer des produits ou services prescrits, sous réserve de certaines conditions.

Quiconque contrevient à cette interdiction commet une infraction et tout contrat conclu par suite d'une telle convention est nul. Si le contrat est réputé nul, le consommateur a droit à un remboursement pour le produit ou le service et, s'il y a lieu, au paiement des frais raisonnables qu'il a engagés pour enlever et retourner le produit et, le cas échéant, pour obtenir et installer un produit de rechange.

En cas de non-remboursement, le consommateur peut introduire une action devant la Cour supérieure de justice et il a le droit, s'il obtient gain de cause, de recouvrer deux fois les sommes d'argent versées aux termes du contrat, en plus des frais raisonnables mentionnés ci-dessus. S'il obtient des dépens, le consommateur a le droit de recouvrer les dépens réels additionnels qu'il a engagés pour obtenir l'ordonnance en question.

Le consommateur est déchargé de toute responsabilité si un contrat est réputé nul et la nullité du contrat ne peut pas donner lieu à une cause d'action à l'encontre du consommateur.

Enfin, le ministre des Services gouvernementaux et des Services aux consommateurs se voit conférer le pouvoir de prendre des règlements concernant un large éventail de questions prévues par la Loi, notamment le pouvoir de prescrire les produits ou services visés par l'interdiction prévue par la Loi.

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Sanction royale

3^e lecture

2^e lecture

1^{re} lecture 29 mai 2017

Projet de loi de député

M. Y. Baker

Loi interdisant les appels non sollicités visant à vendre, à donner à bail,
à louer ou à annoncer des produits ou services prescrits

Projet de loi 137

2^e SESSION, 41^e LÉGISLATURE, ONTARIO
66 ELIZABETH II, 2017

Assemblée
législative
de l'Ontario



Legislative
Assembly
of Ontario